



CALLI LAW, LLC
One Flagler Building, Suite 1100
14 Northeast 1st Avenue
Miami, Florida 33132
T. 786.504.0911
F. 786.504.0912
www.calli-law.com

December 30, 2021

BY EMAIL

Honorable Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: **In re Search Warrant Dated November 5, 2021, Case No. 21-MC-00813 (AT)**

Dear Judge Torres,

Petitioners request that the Court adopt the Special Master's December 16, 2021 Report and Recommendation ("the R&R") by entering an *interim* allocation order as provided for by Fed. R. Civ. P. 53(g)(3).¹ At this time, petitioners will not oppose the Special Master's recommendation that they be responsible for fifty (50) percent of her compensation and expenses, and that the government be responsible for the remaining fifty (50) percent. When the Special Master completes her duties as specified in the Court's December 8, 2021 Order, however, petitioners reserve the right to request that the Court allocate the full amount of the Special Master's compensation and expenses to the government, and that the government reimburse petitioners for the amounts paid to the Special Master to date. At that time the Court will then have a complete record that will enable it to make the determinations required by Rule 53(g)(3).

¹ Rule 53(g)(3) provides: "Allocating Payment. The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master. An *interim allocation* may be amended to reflect a decision on the merits." *Id.* (emphasis added).

Levy costs against the press for exercising protected First Amendment rights operates “effectively as a censor to check critical comment by the press, undercutting the basic assumption of our political system that the press will often serve as an important restraint on government.” *Minneapolis Star and Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575, 585 (1983). Project Veritas reserves its right to present these First Amendment arguments once the completed record is assembled. These cost considerations are significant for a small “upstart” journalism organization “armed with a cell phone and a web site.” See *Project Veritas v. New York Times Co.*, Case No. 63921/2020 (CW), 2021 WL 2395290, at *10-11 (N.Y. S. Ct. Mar. 18, 2021) (Wood, J.).

We expect the completed record will show not only that the government’s seizure of electronic devices from petitioners violated the First Amendment, the Privacy Protection Act, and Department of Justice regulations, but also that the Federal Bureau of Investigation (“FBI”) executed prohibited general searches by indiscriminately seizing any and all electronic devices from petitioners without regard to content and the particularity requirements of the warrants.

As the government’s December 23, 2021, status report to the Special Master acknowledges, the FBI seized ten (10) devices containing *no* information responsive to the search warrants and seven (7) devices that were not readable. We expect that once the record is complete, the number of devices seized by the FBI containing no responsive information will be significantly higher. This evidence will inform the Court’s determination whether to amend its interim allocation as contemplated by Rule 53(g)(3).

In the interim, Petitioners will remit the allocated amounts to the Special Master in payment of her invoices as prescribed in the R&R.

Respectfully,

CALLI LAW, LLC

/s/

By: _____

Paul A. Calli
Charles P. Short

14 NE 1st Avenue

Suite 1100

Miami, FL 33132

T. 786-504-0911

F. 786-504-0912

pcalli@calli-law.com

cshort@calli-law.com

Admitted Pro Hac Vice

Harlan Protass
PROTASS LAW PLLC
260 Madison Avenue
22nd Floor
New York, NY 10016
T. 212-455-0335
F. 646-607-0760
hprotass@protasslaw.com

Benjamin Barr
BARR & KLEIN PLLC
444 N. Michigan Avenue
Suite 1200
Chicago, IL 60611
T. 202-595-4671
ben@barklein.com

Admitted Pro Hac Vice

Stephen R. Klein
BARR & KLEIN PLLC
1629 K. Street, NW
Suite 300
Washington, DC 20006
T. 202-804-6676
steve@barrklein.com

Admitted Pro Hac Vice

*Counsel for James O'Keefe, Project Veritas
and Project Veritas Action Fund*

cc: All Counsel of Record (via ECF)